Committee on Criminal Justice Appropriations

Friday, March 17, 2006
8:00 am – 2:00 pm
214 Capitol

Allan Bense
Speaker

Gustavo Barreiro, CHAIR
Arthenia Joyner, Vice-Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Criminal Justice Appropriations Committee

Start Date and Time: Friday, March 17, 2006 08:00 am

End Date and Time: Friday, March 17, 2006 02:00 pm

Location: 214 Capitol
Duration: 6.00 hrs

Consideration of the following bill(s):

HB 61 CS Postsentencing Testing of DNA Evidence by Quinones, Bogdanoff
HB 283 Correctional Probation Officers by Kreegel
HB 303 CS Dart-Firing Stun Guns by Kravitz

Budget workshop on the following:
-Juvenile boot camps

-Options for Juvenile Accountability Systems

-Department of Corrections Pharmaceutical Services

-Other presentations and testimony

NOTICE FINALIZED on 03/15/2006 16:02 by KAG

Florida House of Representatives

Fiscal Council

Committee on Criminal Justice Appropriations

Allan Bense
Speaker

Gustavo Barreiro
Chair

AGENDA
COMMITTEE ON CRIMINAL JUSTICE APPROPRIATIONS
THURSDAY, FEBRUARY 23, 2006
9:00am - 12:00pm
214 Capitol

I. Roll Call and opening comments by Chair Barreiro

II. Consideration of the following bills:

- **HB 61 CS by Quinones, Bogdanoff- Postsentencing Testing of DNA Evidence**
- **HB 283 by Kreegel- Correctional Probation Officers**
- **HB 303 CS by Kravitz- Dart-Firing Stun Guns**

III. Juvenile boot camps:

- **Presentation by Sheriff Robert Crowder on juvenile boot camps**
- **Dr. Baden call-in discussion**
- **Public testimony**

IV. Juvenile justice accountability systems by Dr. Tom Blomberg, Dean and Professor of Criminology: Florida State University

V. Department of Corrections pharmaceutical services:

- **Presentation by Mark Zilner, Diamond Pharmaceuticals**

VI. Other presentations and testimony

VII. Adjourn

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 61 CS Postsentencing Testing of DNA Evidence
SPONSOR(S): Quinones and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 186

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	6 Y, 0 N, w/CS	Williamson	Everhart
2) Criminal Justice Committee	7 Y, 0 N	Cunningham	Kramer
3) Criminal Justice Appropriations Committee		DeBeaugrine	DeBeaugrine
4) State Administration Council			
5)			

SUMMARY ANALYSIS

Current law provided a four-year window for a convicted person claiming innocence to file a postconviction motion seeking the testing of DNA evidence. The four-year window expired October 1, 2005.

The bill removes the four-year time limitation and expands those eligible to request DNA testing. Any person convicted of a felony and sentenced, not just those who claimed innocence, may petition the court for postconviction DNA testing. They may petition for the testing at any time following the date that the judgment and sentence is final. In addition, the bill requires the maintenance of physical evidence until the defendant's sentence is completed.

Application of the bill's provisions is retroactive to October 1, 2005.

The fiscal impact of the bill is indeterminate. Please see fiscal notes for further explanation.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill requires governmental entities to maintain physical evidence for a longer period.

Safeguard individual liberty – The bill allows any person to file a petition for postconviction DNA testing without worrying about meeting a deadline for filing the motion.

B. EFFECT OF PROPOSED CHANGES:

EFFECT OF BILL

The bill deletes the timeframe for filing petitions for postconviction DNA (deoxyribonucleic acid) testing. Current law provides a four-year window for a person maintaining his or her innocence to file a postconviction motion seeking the testing of DNA evidence. The four-year window expired October 1, 2005.

Any person convicted of a felony and sentenced may petition the court for postconviction DNA testing at any time following the date that the judgment and sentence is final. As such, a person who pleads guilty or who maintains his or her innocence is eligible to petition the court for DNA testing. Current law only allows a person maintaining his or her innocence to petition the court for postconviction DNA testing.

The bill requires the maintenance of physical evidence until the defendant's sentence is completed. Governmental entities cannot dispose of the evidence prior to the defendant's completion of his or her sentence.

Application of the bill's provisions is retroactive to October 1, 2005.

BACKGROUND

GENERAL BACKGROUND

The legislature first addressed the issue of postconviction DNA testing in 2001. It gave a person, convicted at trial and sentenced, a statutory right to petition for postconviction DNA testing of physical evidence collected at the time of the crime. This right is based on the assertion that the DNA test results could exonerate that person or alternatively reduce the sentence.[1] In order to petition the court, the person must:

- Be convicted at trial and sentenced;
- Show that his or her identity was a genuinely disputed issue in the case and why;
- Claim to be innocent; and
- Meet the reasonable probability standard.[2]

If the trial court determines that the facts are sufficiently alleged, the state attorney must respond within 30 days pursuant to court order. The trial court must make a determination based on a finding of whether:

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[1] *See* ch. 2001-97, L.O.F.; ss. 925.11 and 943.3251, F.S.

[2] The reasonable probability standard provides that the person would have been acquitted or received a lesser sentence if DNA testing was performed at the time of trial or at the time of the petition under the evolving forensic DNA testing technologies.

- The physical evidence that may contain DNA still exists;
- The results of DNA testing of that evidence would have been admissible at trial;
- There is reliable proof that the evidence has not been materially altered;
- There is reliable proof that the evidence would be admissible at a future hearing; and
- A reasonable probability exists that the defendant would have been acquitted of the crime or received a lesser sentence if DNA test results had been admitted at trial.

If the court denies the petition for DNA testing, there is a 15-day period to file a motion for rehearing. The 30-day period for filing an appeal is tolled until the court rules on the motion. Otherwise, either party has 30 days to file an appeal of the ruling. The order denying relief must include notice of these time limitations. If the court grants the petition for DNA testing, the defendant is assessed the cost of the DNA testing unless the court finds that the defendant is indigent. The Florida Department of Law Enforcement (FDLE) performs the DNA test pursuant to court order.[3] FDLE provides the test results to the court, the defendant, and the prosecuting authority.

CURRENT TIME LIMITATIONS

Current law imposes a four-year period for filing such petitions. The time limitation is measured from the later of the following dates based on the law's effective date of October 1, 2003:

- Four years from the date the judgment and sentence became final;
- Four years from the date the conviction was affirmed on direct appeal;
- Four years from the date collateral counsel was appointed;[4] or
- October 1, 2005.[5]

The law provides a catchall exception to the four-year time limitation. A person convicted at trial and sentenced can petition at any time for postconviction DNA testing if the facts upon which the petition is founded were unknown or could not have been known with the exercise of due diligence.

PRESERVATION OF PHYSICAL EVIDENCE

Current law requires preservation of physical evidence collected at the time of the crime if postconviction DNA testing is possible.[6] With the exception of death penalty cases, governmental entities maintain physical evidence for at least four years or until October 1, 2005.[7] Evidence in death penalty cases is preserved for 60 days after the execution of the sentence. Governmental entities can dispose of physical evidence earlier under certain conditions.[8]

Most recently, the governor issued Executive Order 05-160.[9] The order requires governmental entities in the possession of any physical evidence to preserve the evidence if DNA testing may be requested.

RIGHTS TO APPEAL, GENERALLY

Under current law, a convicted person has certain rights to appeal on direct appeal or on matters that are collateral to the conviction.[10]

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[3] *See* s. 943.3251, F.S.
[4] This is applicable solely in death penalty cases.
[5] Section 925.11(1)(b), F.S.
[6] Section 925.11(4), F.S.
[7] *See* s. 925.11(4), F.S.
[8] Section 925.11(4)(c), F.S., provides the conditions for early disposal of physical evidence. Any counsel of record, the prosecuting authority, and the Attorney General must receive notice prior to the disposition of evidence. Within 90 days after notification, if the notifying governmental entity does not receive either a copy of a petition for postconviction DNA testing or a request not to dispose of the evidence because of the filing of a petition, the evidence may be disposed of, unless some other provision of law or rule requires its preservation or retention.
[9] The order was issued August 5, 2005.
[10] Article V, section 4(b) of the Florida Constitution conveys a constitutional protection of this right. *See Amendments to the Florida Rules of Appellate Procedure*, 696 So.2d 1103 (Fla. 1996).

DIRECT APPEALS AFTER TRIAL

Matters raised on direct appeal include evidentiary rulings made by the trial court during the course of the defendant's trial, and other matters objected to during the course of the trial such, as the jury instructions, prosecutorial misconduct, and procedural rulings made by the trial court. The legislature codified the "contemporaneous objection" rule. It is a procedural bar that prevents defendants from raising issues on appeal not objected to at the trial level. The rule allows trial court judges to consider rulings carefully, perhaps correcting potential mistakes at the trial level.

In *State v. Jefferson*,[11] the Florida Supreme Court found that the provision did not represent a jurisdictional bar to appellate review in criminal cases, but rather that the legislature acted within its power to "place reasonable conditions" upon this right to appeal.[12]

APPEAL OR REVIEW AFTER A PLEA OF GUILTY OR NOLO CONTENDERE

Appeal rights are limited when a defendant pleads guilty or *nolo contendere* (no contest). Such a plea means a defendant chooses to waive the right to take his or her case to trial.[13]

In *Robinson v. State*,[14] the Florida Supreme Court reviewed the constitutionality of the statutory provision. The court upheld the statute making it clear that once a defendant pleads guilty the only issues for appeal are actions that took place contemporaneous with the plea. The court stated: "[t]here is an exclusive and limited class of issues which occur contemporaneously with the entry of the plea that may be the proper subject of an appeal. To our knowledge, they would include only the following: (1) subject matter jurisdiction, (2) the illegality of the sentence, (3) the failure of the government to abide by the plea agreement, and (4) the voluntary and intelligent character of the plea." These principles continue to control.

COLLATERAL REVIEW

Postconviction proceedings, also known as collateral review,[15] usually involve claims that:

- The defendant's trial counsel was ineffective;
- There is newly discovered evidence; and
- The prosecution failed to disclose exculpatory evidence.

The defendant must file a motion in the trial court where he or she was tried and sentenced.[16] Unless the record in the case conclusively shows that the defendant is entitled to no relief, the trial court must order the state attorney to respond to the motion and may then hold an evidentiary hearing.[17] If the trial court denies the motion for postconviction relief, with or without holding an evidentiary hearing, the defendant is entitled to appeal this denial to the District Court of Appeal with jurisdiction over the circuit court where the motion was filed.[18]

Motions for postconviction relief based on newly discovered evidence must be raised within two years of the discovery of such evidence.[19] The Florida Supreme Court has held that the two-year time limit

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[11] 758 So.2d 661 (Fla. 2000).
[12] *Id.* at 664 (citing *Amendments to the Florida Rules of Appellate Procedure, supra*, at 1104-1105).
[13] Section 924.06(3), F.S.
[14] 373 So.2d 898 (Fla. 1979).
[15] Procedurally, collateral review is generally governed by FLA. R. CRIM. P. 3.850.
[16] The motion must be filed within two years of the finalization of the defendant's judgment and sentence unless the motion alleges that the facts on which the claim is based were unknown to the defendant and could not have been ascertained by the exercise of due diligence. *See* FLA. R. CRIM. P. 3.850(b).
[17] *See* FLA. R. CRIM. P. 3.850(d).
[18] In order to grant a new trial based on newly discovered evidence, the trial court must first find that the evidence was unknown and could not have been known at the time of trial through due diligence. In addition, the trial court must find that the evidence is of such a nature that it would probably produce an acquittal on retrial. *See Jones v. State*, 709 So.2d 512 (Fla. 1998); *Torres-Arboleda v. Dugger*, 636 So.2d 1321 (Fla. 1994).
[19] *See Adams v. State*, 543 So.2d 1244 (Fla.1989).

for filing a motion based on newly discovered evidence begins to run on a defendant's postconviction request for DNA testing when the testing method became available. For example, in *Sireci v. State*,[20] the Florida Supreme Court held that the defendant's postconviction claim filed on his 1976 conviction, which was filed in 1993, was time barred because "DNA typing was recognized in this state as a valid test as early as 1988."[21]

A defendant is entitled to challenge a conviction and death sentence in three stages. First, the public defender or private counsel must file a direct appeal to the Florida Supreme Court. An appeal of that decision is to the U.S. Supreme Court by petition for writ of *certiorari*. Second, if the U.S. Supreme Court rejects the appeal, the defendant's sentence becomes final and the state collateral postconviction proceeding or collateral review begins.[22] Third, the defendant seeks a federal writ of *habeas corpus*.[23] Appeals of federal *habeas* petitions from Florida are to the U.S. Court of Appeals for the Eleventh Circuit and then to the U.S. Supreme Court. Finally, once the governor signs a death warrant, a defendant typically files a second or successive collateral postconviction motions and a second federal *habeas* petition, along with motions to stay the execution.

C. SECTION DIRECTORY:

Section 1 amends s. 925.11, F.S., relating to postconviction DNA testing.

Section 2 provides an effective date of "upon becoming a law," applied retroactively to October 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate. See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

[20] 773 So.2d 34 (Fla. 2000).
[21] *Id.* at 43. *See also Ziegler v. State*, 654 So.2d 1162 (Fla. 1995).
[22] Rules 3.850, 3.851 and 3.852, FLA. R. CRIM. P., control state collateral postconviction proceedings. Unlike a direct appeal, a collateral postconviction proceeding raises claims that are "collateral" to what transpired in the trial court. Consequently, such postconviction proceedings usually involve three categories of claims: ineffective assistance of trial counsel; denial of due process by the prosecution's suppression of material, exculpatory evidence; and newly discovered evidence, for example, post-trial recantation by a principal witness. Since the consideration of these claims often require new fact-finding, collateral postconviction motions are filed in the trial court that sentenced the defendant to death. Appeals from the grant or denial of postconviction relief are to the Florida Supreme Court.
[23] This is a proceeding controlled by Title 28 U.S.C. § 2254(a). Federal *habeas* allows a defendant to petition a U.S. district court to review whether the conviction or sentence violates or was obtained in violation of federal law. Federal *habeas* is almost exclusively limited to consideration of claims previously asserted on direct appeal or in state postconviction proceedings.

The bill may impose an indeterminate increase in costs incurred in storage and preservation of evidence in the custody of local governmental entities, including, but not limited to, police and sheriff's departments, clerks of the court,[24] and hospital facilities.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may impose an indeterminate increase in costs incurred in storage and preservation of evidence in the custody of nongovernmental entities, including, but not limited to, private labs, hospital facilities, and private counsels' offices.

D. FISCAL COMMENTS:[25]

The FDLE has indicated that the costs of additional DNA tests could be as high as $725,073 if any additional analyses required by the bill are conducted in-house or as high as $2.1 million if the additional work is outsourced. The FDLE arrives at this calculation by assuming that 6% of inmates who pled guilty would petition the court for DNA testing of evidence. This would result in 3,483 additional DNA analyses[26]. The 6% assumption is based on the approximate percentage of inmates who are eligible under current law and have requested DNA testing. Current law only allows inmates who did not plead guilty to request DNA testing.

The FDLE then calculates need for additional resources of 4.8 FTE and $725,073 for salaries, expenses and additional lab equipment needed to process the estimated 3,483 additional cases. The $2.1 million upper estimate for outsourcing assumes $3,000 per analysis by a private lab.

FDLE staff indicates, however, that these two figures represent the upper extreme. There are a number of factors that could impact the assumption that 6% of the newly eligible inmates would actually request and be granted testing of DNA evidence:

- There is no evidence to suggest that inmates who admitted guilt would be as likely to request DNA testing as those who maintained their innocence throughout court proceedings.
- There is no way to know how many newly eligible inmates would have DNA evidence available to be tested. In addition to cases where there was never DNA evidence collected, local jurisdictions often destroy evidence once a sentence is imposed.
- According to FDLE staff, it has become common practice to test evidence containing DNA during the criminal investigation. It is not known whether courts would allow subsequent DNA testing of evidence that has already been tested if the initial test was conclusive.

Based on the necessity to make assumptions with very little supporting data, the fiscal impact on the FDLE is indeterminate.

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[24] Per the Florida Association of Court Clerks and Comptrollers (FACC), the clerk is required to preserve evidence in a criminal case "virtually forever—law requires clerks to hold evidence in a criminal case in the event there could potentially be an appeal....there are appeals even on death row." The clerks are fine with the suggested extended timeframes in the bill. Email from the FACC, October 11, 2005.

[25] FDLE Fiscal Analysis of HB 61 by Representative Quinones, October 26, 2005.

[26] Estimated 58,060 inmates who pled guilty multiplied by 0.06.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution, because it is a criminal law.

2. Other:

SEPARATION OF POWERS: SUBSTANCE VERSUS PROCEDURE

The bill could raise concerns regarding separation of powers.

CONSTITUTIONAL AUTHORITY

Under Article V, Section 2 of the Florida Constitution, the Supreme Court "shall adopt rules of practice and procedure in all courts . . ." The section also authorizes the legislature to repeal court rules of procedure with a two-thirds vote of the membership of both houses.

SEPARATION OF POWERS

Article II, Section 3 of the Florida Constitution provides that "[t]he powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." The legislature has the exclusive power to enact substantive laws[27] while Article V, section 2 of the Florida Constitution grants the Florida Supreme Court the power to "adopt rules for the practice and procedure in all courts, including the time for seeking appellate review."

Changes to substantive law by court rules of procedure appear to violate the separation of powers provision of the Florida Constitution.[28]

DISTINGUISHING SUBSTANCE FROM PROCEDURE

Generally speaking, "substantive law" involves matters of public policy affecting the authority of government and rights of citizens relating to life, liberty, and property. Court "rules of practice and procedure" govern the administration of courts and the behavior of litigants within a court proceeding. In practice, determining the difference is not simple or clear. In 1973, Justice Adkins described the difference between substance and procedure:

> The entire area of substance and procedure may be described as a "twilight zone" and a statute or rule will be characterized as substantive or procedural according to the nature of the problem for which a characterization must be made. From extensive research, I have gleaned the following general tests as to what may be encompassed by the term "practice and procedure." Practice and procedure encompass the course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion. "Practice and procedure" may be described as the machinery of the judicial process as opposed to the product thereof. Examination of many

[27] *See* Art. III, s. 1, Fla. Const.; *Allen v. Butterworth*, 756 So.2d 52 (Fla. 2000); *Johnson v. State*, 336 So.2d 93 (Fla. 1976).
[28] *Id.*

> authorities leads me to conclude that substantive law includes those rules and principles which fix and declare the primary rights of individuals as respects their persons and their property. As to the term "procedure," I conceive it to include the administration of the remedies available in cases of invasion of primary rights of individuals. The term "rules of practice and procedure" includes all rules governing the parties, their counsel and the Court throughout the progress of the case from the time of its initiation until final judgment and its execution.[29]

This "twilight zone" remains to this day, and causes, in the analysis of many enactments, a difficult determination of whether a matter is procedural or substantive.

DNA TESTING

In 2001, the legislature created a limited statutory right to give defendants in closed criminal cases an additional opportunity to prove their innocence using DNA evidence.[30] It provided a two-year period for pending and future cases that expired on October 1, 2003. Shortly after enactment, the court passed a rule to implement the statute reflecting the statutory deadlines.[31] Prior to the October 1 expiration, the court issued an order temporarily suspending the deadline. In addition, the court ordered government entities to store evidence in all closed criminal cases indefinitely.[32] The opinion of the court suspending the statutory deadline was a four to three decision. Justice Wells said in dissent, ". . . this Court does not have jurisdiction to 'suspend' a provision of a lawfully enacted statute or to mandate that evidence . . . be maintained beyond the period the statute specifically states that the evidence is to be maintained."[33]

In 2004, the legislature further amended the law to extend the period from two to four years and provided for expiration October 1, 2005.[34] In September 2004, the court amended its rule to reflect the statutory changes.[35] The court amended the rule, once again, to extend the deadline from October 1, 2005, to July 1, 2006.[36]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Florida Bar "adopted a legislative position calling for a permanent method for state inmates to seek DNA testing that could exonerate them."[37] The Bar took no position regarding the availability of postconviction DNA testing for those who plead guilty or no contest.[38]

The Florida Innocence Initiative contends that maintenance of evidence is the most critical aspect of preserving a defendant's right to DNA testing.[39]

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[29] *In re Florida Rules of Criminal Procedure*, 272 So.2d 65, 66 (Fla. 1973).
[30] *See* s. 925.11, F.S.; ch. 2001-197, L.O.F.
[31] *See Amendment to Florida Rules of Criminal Procedure Creating Rule 3.853*, 807 So.2d 633 (Fla. 2001).
[32] *See Amendments to Florida Rule of Criminal Procedure 3.853(d)(1)(A) (Postconviction DNA Testing)*, 857 So.2d 190 (Fla. 2003).
[33] Justice Wells was joined by Justices Cantero and Bell. Comments of the Criminal Court Steering Committee, October 13, 2003, at 8 and 9 n.33, (citing Wells, J., dissenting in *Amendments to Florida Rule of Criminal Procedure 3.853(d)(1)(A)*).
[34] *See* ch. 2004-67, L.O.F.
[35] *See* 884 So.2d 934.
[36] *See Amendments to Florida Rule of Criminal Procedure 3.853(D)*, SC05-1702 (September 29, 2005).
[37] Blankenship, G. "Bar supports permanent DNA reforms," *The Florida Bar News*, September 15, 2005.
[38] *Id.*
[39] Pudlow, J. "Momentum builds for extending DNA testing," *The Florida Bar News*, September 1, 2005.

FDLE recommends that the department receive notice at the time a motion for postconviction DNA testing is filed rather than when it is signed. FDLE staff could then assist the parties and expedite the testing process.[40]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On October 19, 2005, the Governmental Operations Committee adopted a strike-all amendment and reported the bill favorably with Committee Substitute. The strike-all amendment authorizes postconviction DNA testing of any person convicted of a felony and sentenced, at any time, rather than limiting testing to those persons maintaining their innocence. The strike-all amendment removes the authorization for early disposal of physical evidence by governmental entities.

[40] FDLE Analysis of HB 61, "Issues Related to FDLE," October 26, 2005.

CHAMBER ACTION

The Governmental Operations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the postsentencing testing of DNA evidence; amending s. 925.11, F.S.; revising the circumstances under which a person who has been sentenced for committing a felony may petition the court for postsentencing testing of DNA evidence; abolishing certain time limitations imposed upon such testing; authorizing a governmental entity to dispose of physical evidence if the sentence imposed has expired and another law or rule does not require that the evidence be retained; providing for retroactive application; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 925.11, Florida Statutes, is amended to read:

925.11 Postsentencing DNA testing.--

(1) PETITION FOR EXAMINATION.--

(a) A person who has been convicted of a felony and sentenced for committing that offense ~~tried and found guilty of committing a crime and has been sentenced~~ by a court established by the laws of this state may petition that court to order the examination of physical evidence collected at the time of the investigation of the crime for which he or she has been sentenced which may contain DNA (deoxyribonucleic acid) and which would exonerate that person or mitigate the sentence that person received.

(b) A petition for postsentencing DNA testing may be filed or considered at any time following the date that the judgment and sentence in the case becomes final. ~~Except as provided in subparagraph 2., a petition for postsentencing DNA testing may be filed or considered:~~

~~1. Within 4 years following the date that the judgment and sentence in the case becomes final if no direct appeal is taken, within 4 years following the date that the conviction is affirmed on direct appeal if an appeal is taken, within 4 years following the date that collateral counsel is appointed or retained subsequent to the conviction being affirmed on direct appeal in a capital case, or by October 1, 2005, whichever occurs later; or~~

~~2. At any time if the facts on which the petition is predicated were unknown to the petitioner or the petitioner's attorney and could not have been ascertained by the exercise of due diligence.~~

(2) METHOD FOR SEEKING POSTSENTENCING DNA TESTING.--

(a) The petition for postsentencing DNA testing must be made under oath by the sentenced defendant and must include the following:

1. A statement of the facts relied on in support of the petition, including a description of the physical evidence containing DNA to be tested and, if known, the present location or the last known location of the evidence and how it was originally obtained;

2. A statement that the evidence was not previously tested for DNA or a statement that the results of any previous DNA testing were inconclusive and that subsequent scientific developments in DNA testing techniques would likely produce a definitive result;

3. A statement that the sentenced defendant is innocent and how the DNA testing requested by the petition will exonerate the defendant of the crime for which the defendant was sentenced or will mitigate the sentence received by the defendant for that crime;

4. A statement that identification of the defendant is a genuinely disputed issue in the case, and why it is an issue;

5. Any other facts relevant to the petition; and

6. A certificate that a copy of the petition has been served on the prosecuting authority.

(b) Upon receiving the petition, the clerk of the court shall file it and deliver the court file to the assigned judge.

(c) The court shall review the petition and deny it if it is insufficient. If the petition is sufficient, the prosecuting

authority shall be ordered to respond to the petition within 30 days.

(d) Upon receiving the response of the prosecuting authority, the court shall review the response and enter an order on the merits of the petition or set the petition for hearing.

(e) Counsel may be appointed to assist the sentenced defendant if the petition proceeds to a hearing and if the court determines that the assistance of counsel is necessary and makes the requisite finding of indigency.

(f) The court shall make the following findings when ruling on the petition:

1. Whether the sentenced defendant has shown that the physical evidence that may contain DNA still exists;

2. Whether the results of DNA testing of that physical evidence would be admissible at trial and whether there exists reliable proof to establish that the evidence has not been materially altered and would be admissible at a future hearing; and

3. Whether there is a reasonable probability that the sentenced defendant would have been acquitted or would have received a lesser sentence if the DNA evidence had been admitted at trial.

(g) If the court orders DNA testing of the physical evidence, the cost of such testing may be assessed against the sentenced defendant unless he or she is indigent. If the sentenced defendant is indigent, the state shall bear the cost of the DNA testing ordered by the court.

(h) Any DNA testing ordered by the court shall be carried out by the Department of Law Enforcement or its designee, as provided in s. 943.3251.

(i) The results of the DNA testing ordered by the court shall be provided to the court, the sentenced defendant, and the prosecuting authority.

(3) RIGHT TO APPEAL; REHEARING.--

(a) An appeal from the court's order on the petition for postsentencing DNA testing may be taken by any adversely affected party.

(b) An order denying relief shall include a statement that the sentenced defendant has the right to appeal within 30 days after the order denying relief is entered.

(c) The sentenced defendant may file a motion for rehearing of any order denying relief within 15 days after service of the order denying relief. The time for filing an appeal shall be tolled until an order on the motion for rehearing has been entered.

(d) The clerk of the court shall serve on all parties a copy of any order rendered with a certificate of service, including the date of service.

(4) PRESERVATION OF EVIDENCE.--

(a) Governmental entities that may be in possession of any physical evidence in the case, including, but not limited to, any investigating law enforcement agency, the clerk of the court, the prosecuting authority, or the Department of Law Enforcement shall maintain any physical evidence collected at

the time of the crime for which a postsentencing testing of DNA may be requested.

(b) ~~Except for a case in which the death penalty is imposed, the evidence shall be maintained for at least the period of time set forth in subparagraph (1)(b)1.~~ In a case in which the death penalty is imposed, the evidence shall be maintained for 60 days after execution of the sentence. In all other cases, a governmental entity may dispose of the physical evidence if the term of the sentence imposed in the case has expired and

~~(c) A governmental entity may dispose of the physical evidence before the expiration of the period of time set forth in paragraph (1)(b) if all of the conditions set forth below are met.~~

~~1. The governmental entity notifies all of the following individuals of its intent to dispose of the evidence: the sentenced defendant, any counsel of record, the prosecuting authority, and the Attorney General.~~

~~2. The notifying entity does not receive, within 90 days after sending the notification, either a copy of a petition for postsentencing DNA testing filed pursuant to this section or a request that the evidence not be destroyed because the sentenced defendant will be filing the petition before the time for filing it has expired.~~

~~3.~~ no other provision of law or rule requires that the physical evidence be preserved or retained.

Section 2. This act shall take effect upon becoming a law and shall apply retroactively to October 1, 2005.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0283**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Criminal Justice Appropriations

Representative(s) Kreegel offered the following:

Amendment

Remove line(s) 23 and 24 and insert:

probation officer elects to no longer carry a firearm or is no longer

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **283**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: Criminal Justice Appropriations

Representative(s) Adams offered the following:

Amendment (with title amendments)

Between lines 29 and 30 insert:

Section 2. The sum of $1,825,389 in nonrecurring funds is appropriated from the General Revenue Fund to the Department of Corrections for the 2006-2007 fiscal year for expenses for the purpose of providing a standardized firearm and ammunition to correctional probation officers.

========== T I T L E A M E N D M E N T ==========

Remove line(s) 7 and insert:

appropriation; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 283 Correctional Probation Officers
SPONSOR(S): Kreegel
TIED BILLS: **IDEN./SIM. BILLS:** SB 690

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	6 Y, 0 N	Cunningham	Kramer
2) Criminal Justice Appropriations Committee		Sneed	DeBeaugrine
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Currently, if a correctional probation officer elects to carry a firearm while on duty, he or she is responsible for the cost of the firearm.

This bill requires that the Department of Corrections provide probation officers who elect to carry a firearm a standardized semi-automatic firearm and standardized ammunition for such firearm. This bill gives the department the authority to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement the bill's provisions.

The Department of Corrections states in its fiscal analysis that it will cost $1,825,389 to implement the provisions of this bill. The department would be responsible for absorbing this cost within its current operating budget.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – This bill requires the Department of Corrections to provide standardized firearms and ammunition to probation officers who elect to carry a firearm. This bill also gives the Department of Corrections the authority to adopt rules.

Maintain Public Security - This bill requires the Department of Corrections to provide standardized firearms and ammunition to probation officers who elect to carry a firearm.

B. EFFECT OF PROPOSED CHANGES:

The Department of Corrections (department) employs over 2,700 correctional probation officers (CPOs) whose primary responsibilities are the supervised custody, surveillance, and control of assigned offenders.[1] Currently, CPOs who have received authorization[2] from the department may elect to carry department-approved firearms, ammunition, and reloading devices while on duty.[3] Although the department currently provides standardized ammunition to its CPOs, the department's rules require that CPOs purchase their own firearm.[4]

This bill requires that the department provide CPOs who elect to carry a firearm a standardized semi-automatic firearm and standardized ammunition for such firearm. If the CPO decides to not carry a firearm, decides to change the type of firearm he/she carries, or is no longer employed by the department, this bill provides that the CPO must return the firearm and any unused ammunition to the department. This bill gives the department the authority to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S., to implement its provisions.

C. SECTION DIRECTORY:

Section 1. Creates s. 943.17001, F.S.; requiring the Department of Corrections to provide a standardized semi-automatic firearm and standardized ammunition to probation officers who choose to carry a firearm; requiring probation officers to return firearms and ammunition to the Department of Corrections if the officer no longer elects to carry a firearm, changes the type of firearm he/she chooses

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[1] Section 943.10(3), F.S., defines "correctional probation officer" as a "full time state employees whose primary responsibilities are the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community." *See also* Department of Corrections Procedure 302.313.

[2] CPOs requesting authorization to carry a firearm while on duty must submit a written request to the Department containing documentation that they have complied with the required training and qualification requirements of the Criminal Justice Standards and Training Commission and the Department. The Department must then review the request, review documentation of the officer's training and qualifications, and complete a Florida Crime Information Center/National Crime Information Center check on the officer and the firearm the officer intends to use. If approved, the Department issues the CPO a weapon card, which establishes that the CPO is authorized to carry a specific firearm while on duty. *See* Rule 33-302.104, F.A.C.

[3] Department of Corrections' Procedure 302.313 authorizes CPOs to carry one of the following firearms:

- On or after July 13, 2005,
  - Smith and Wesson five or six shot revolver of .38 or .357 caliber, with a barrel length of two-four inches
  - one of the following semi-automatic pistols with a barrel length not to exceed five inches and a magazine with fifteen round law enforcement capacity:
    - Smith and Wesson 9 millimeter,
    - Beretta 9 millimeter, 92 series , or
    - Glock 9 millimeter.
- Prior to July 13, 2005, if an officer purchased an approved firearm not specified above, the officer will be allowed to qualify or maintain qualification with that firearm and will be allowed to continue with annual qualification with that specific firearm.

[4] Rule 33-302.104(11), F.A.C.

to carry; or is no longer employed by the Department of Corrections; granting the Department of Corrections the authority to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S.

Section 2. This act takes effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Corrections states in its fiscal analysis that it will cost $1,825,389 to implement the provisions of this bill. The department would be responsible for absorbing this cost within its current operating budget. This includes the cost of providing a firearm[5] and ammunition to an estimated 1,801 CPOs. The amount also covers the cost of providing firearms training and the necessary gear associated with carrying a firearm (handcuffs, bullet-proof vest, holster, chemical agent, gun storage locker, etc.) for each CPO.

The department will also be responsible for absorbing the cost of additional firearms, ammunition and supplies for any of the remaining 900 CPOs if they later elect to carry a firearm.

[5] The cost of the weapon is based on the purchase of a 9MM Smith & Wesson semi-automatic via state contract.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill provides a general grant of rulemaking power to the Department of Corrections to implement the bill's provisions. The bill specifically provides rule-making authority to the department to designate a standardized semi-automatic firearm and standardized ammunition. The bill appears to give sufficient rule making authority that is appropriately limited.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

A bill to be entitled

An act relating to correctional probation officers; creating s. 943.17001, F.S.; requiring the Department of Corrections to provide a standardized firearm and ammunition to correctional probation officers; providing rulemaking authority of the department; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 943.17001, Florida Statutes, is created to read:

943.17001 Correctional probation officers; provision of standardized firearm and ammunition.--Upon completion of training, certification, and approval as a correctional probation officer, the Department of Corrections shall provide to any correctional probation officer who chooses to carry a firearm a standardized semiautomatic firearm as designated by department rule, and, for the duration of the correctional probation officer's employment, standardized ammunition as designated by department rule for the semiautomatic firearm issued to the correctional probation officer. If a correctional probation officer elects to no longer carry a firearm, changes the type of firearm he or she chooses to carry, or is no longer employed by the department, he or she must return the firearm and any unused ammunition issued by the department. The department has the authority to adopt rules pursuant to ss.

120.536(1) and 120.54 to implement the provisions of this section.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 303 CS Dart-Firing Stun Guns
SPONSOR(S): Kravitz
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 214, SB 560

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	7 Y, 1 N, w/CS	Cunningham	Kramer
2) Criminal Justice Appropriations Committee		Burns	DeBeaugrine
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Approximately 230 law enforcement agencies in Florida have authorized their officers to use dart-firing stun guns. Although many of these agencies have developed policies and procedures regarding training and use of the devices, there is no state law requiring that officers receive such training. This bill would require the Criminal Justice Standards and Training Commission, housed within the Florida Department of Law Enforcement, to establish standards for instructing law enforcement, correctional, and correctional probation officers in the use of dart-firing stun guns, and incorporate dart-firing stun gun training into the Basic Recruit Training Programs for each discipline. This bill sets forth the circumstances under which a law enforcement, correctional, or correctional probation officer may use a dart-firing stun gun. This bill also defines the term "dart-firing stun gun" and conforms other current statutory provisions to that definition.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – This bill will require the Criminal Justice Standards and Training Commission to establish standards for instructing law enforcement, correctional, and correctional probation officers in the use of dart-firing stun guns.

Maintain Public Security – This bill requires that law enforcement, correctional, and correctional probation officers receive a minimum of 4 hours training in the use of dart-firing stun guns as part of their respective Basic Recruit Training Programs.

B. EFFECT OF PROPOSED CHANGES:

In recent years, there has been a growing interest in the use of less-than-lethal weapons by law enforcement agencies. One such weapon, the stun gun, is a hand-held weapon that delivers an electric shock, effectively incapacitating an individual. One of the most widely-used types of stun gun is the type that fires electrodes that are tethered to the device.[1] These "dart-firing" devices are currently in use by over 7,000 of the 18,000 law enforcement agencies in the United States.[2] This widespread use of dart-firing stun guns by law enforcement has drawn attention to the training officers receive in using the devices (or lack thereof), as well as whether the devices are being used properly in the field.[3]

Definitions

Section 790.001(15), F.S., defines "remote stun gun" as "any nonlethal device with a tethered range not to exceed 16 feet and which shall utilize an identification and tracking system which, upon use, disperses coded material traceable to the purchaser through records kept by the manufacturer on all remote stun guns and all individual cartridges sold which information shall be made available to any law enforcement agency upon request."[4] Section 790.001(14), F.S., defines "electric weapon or device" as "any device which, through the application or use of electrical current, is designed, redesigned, used, or intended to be used for offensive or defensive purposes, the destruction of life, or the infliction of injury."[5] The term "dart-firing stun gun" is not currently defined in the Florida Statutes.

Currently, Florida law authorizes the open carrying of remote stun guns and other nonlethal electric weapons or devices which do not fire a dart or projectile and are designed solely for defensive purposes.[6] If carried for lawful self-defense purposes, the above weapons may be carried in a concealed manner.[7]

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[1] A number of new types of stun gun are being developed including stun guns that administer the electric shock through a stream of liquid, through a laser, and through rubber bullet-type projectiles. http://en.wikipedia.org/wiki/Taser.

[2] *Use of Tasers by Selected law Enforcement Agencies*, Report to the Chairman, Subcommittee on National Security, Emerging Threats and International Relations, Committee on Government Reform, House of Representatives, May, 2005.

[3] *See, e.g., Police Taser 6-Year-Old*, Fox News, November 12, 2004; *Police, Principal Defend Officer's Use Of Taser On 15-Year-Old* Girl, wftv.com, June 2, 2005; *Man Dies After Police Use Taser Gun To Subdue Him*, nbc6.net, June 29, 2005; *Florida Family Sues Sheriff Over Inmate Death, Claims Taser Used*, Associated Press, October 7, 2005.

[4] In addition to firing tethered probes, remote stun guns may be used in a "touch stun" mode, where the probes are not launched, but rather, the device itself actually makes contact with the subject being stunned. This "touch stun" application was the sole method of delivering the electrical current in "electric weapons," the precursor to remote stun guns.

[5] It should be noted that by statutory definition, "remote stun guns" and "electronic weapons" would not be considered firearms. A firearm is a firearm because it expels a projectile "by the action of an explosive." s. 790.001(6), F.S. The most widely-distributed modern models of remote stun guns use nitrogen cartridges to launch the tethered probes. (*Electronic Control Weapons, Concepts and Issues Paper;* IACP National Law Enforcement Policy Center; 1996, rev. Jan. 2005.)

[6] s. 790.053, F.S.

[7] s. 790.01, F.S.

This bill deletes the term "remote stun gun" and its definition contained in s. 790.001, F.S., and creates the definition of the term "dart-firing stun gun." "Dart-firing stun gun" is defined as "any device having one or more tethered darts that are capable of delivering an electrical current." Other statutory references to "remote stun gun" are amended by this bill to become "dart-firing stun gun."

Training:

In Florida, the Criminal Justice Standards and Training Commission (CJSTC), housed within the Florida Department of Law Enforcement, establishes uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement, correctional, and correctional probation officers.[8] Every prospective law enforcement officer (LEO), correctional officer (CO), and correctional probation officer (CPO) must successfully complete a CJSTC-developed Basic Recruit Training Program in order to receive their certification. At this time, the CJSTC does not include training in the use of dart-firing stun guns in the curricula for the LEO, CO, or CPO Basic Recruit Training Programs. In addition, Florida law does not require that LEOs, COs, CPOs receive any type of training in the use of dart-firing stun guns. Instead, the majority of agencies who authorize their officers to carry dart-firing stun guns have developed specific policies regarding their use, or have incorporated such training into their existing policies.

This bill requires the CJSTC to establish standards for instructing LEOs, COs, and CPOs in the use of dart-firing stun guns and to incorporate such training into the Basic Recruit Training Programs.[9] The dart-firing stun gun training portion of the Basic Recruit Training Program must include instruction on the effects the device has on persons, and must last a minimum of 4 hours. After completing the Basic Recruit Training Program, LEOs, COs, and CPOs who have been authorized by their agency to use a dart-firing stun gun must complete a 1-hour annual training course on the use of dart-firing stun guns.

Use of Force:

Currently, Florida Statutes do not specify the circumstances under which any tool of police enforcement can legally be used. The responsibility to "establish uniform minimum training standards for the training of officers in the various criminal justice disciplines" has been statutorily assigned to the CJSTC.[10] As stated above, the CJSTC currently does not include instruction in the use of dart-firing stun guns in its curricula for the Basic Recruit Training Programs for LEOs, COs, and CPOs. However, included in all three of these programs is instruction on the "Use of Force Resistance Matrix." The matrix outlines six levels of resistance and six corresponding levels of response and is used as a guide for officers to apply in real life situations. It appears that Florida law enforcement agencies that use dart-firing stun guns teach their officers to deploy the weapon between Resistance Level 3 and Resistance Level 4 of the Matrix.[11]

This bill specifies that an LEO, CO, or CPO's decision to use a dart-firing stun gun must involve an arrest or custodial situation during which the subject of the arrest or custodial situation escalates resistance to the officer from passive physical to active physical resistance and:

- has the apparent ability to physically threaten the office or others; or
- is preparing or attempting to flee.

This language would appear to place the use of dart-firing stun guns within Level 4 of the Use of Force Resistance Matrix.

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[8] http://www.fdle.state.fl.us/cjst/commission/index.html

[9] The definitions of "law enforcement officer," "correctional officer," and "correctional probation officer," found in s. 943.10, F.S., will apply to these terms as used in the bill.

[10] s. 943.12(5), F.S.

[11] Resistance Level 3 (Passive Physical), is defined as "a subject refuses to comply with or respond physically...makes no attempt to physically defeat your actions but forces you to use physical maneuvers to establish control." Resistance Level 4 (Active Physical) is where a subject makes physically evasive movements to prevent an officer from taking control (e.g. bracing or tensing themselves, pushing or pulling away, taking a fighting stance, not allowing the officer to approach, or running away). *Response to Resistance Matrix*, Basic Recruit Curriculum, Module 5, Unit 1, Lesson 1, Florida Department of Law Enforcement Instructor's Manual, 2005.

C. SECTION DIRECTORY:

Section 1. Amends s. 790.001(15), F.S., deleting the term "remote stun gun" and creating the definition of the term "dart-firing stun gun."

Section 2. Amends s. 790.01, F.S., changing references to "remote stun gun" to "dart-firing stun gun" in relation to carrying concealed weapons.

Section 3. Amends s. 790.053, F.S, changing references to "remote stun gun" to "dart-firing stun gun" in relation to the open carrying of weapons.

Section 4. Amends s. 790.054, F.S., changing references to "remote stun gun" to "dart-firing stun gun" in relation to the penalties for using such a device against an on-duty law enforcement officer.

Section 5. Creates s. 943.1717, F.S., providing that an LEO, CO, or CPO's decision to use a dart-firing stun gun must involve an arrest or custodial situation where the person subject to the arrest or custody escalates resistance to active physical resistance and either has the apparent ability to physically threaten the officer or others or is preparing or attempting to flee or escape; requiring the CJSTC to establish standards for instructing LEOs, COs, and CPOs in the use of dart-firing stun guns and the effects of stun guns on persons; requiring that basic skills courses for LEOs, COs, and CPOs include a minimum of four hours instruction on the use of dart-firing stun guns; requiring LEOs, COs, and CPOs who have been authorized by their agency to use a dart-firing stun gun to complete a 1-hour annual training course on the use of dart-firing stun guns.

Section 6. This act takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Manufacturers and retailers of dart-firing stun guns may benefit in that dart-firing stun guns will be needed for training purposes.

D. FISCAL COMMENTS:

The Basic Recruit Training Program for LEOs consists of 672 hours of training, while COs and CPOs must undergo 532 and 424 hours of training, respectively.[12] The Florida Department of Law Enforcement's (FDLE) analysis of this bill states that the bill's 4-hour dart-firing stun gun training requirement will have a negligible fiscal impact because the additional hours can be included among the flexible hours currently available in the FDLE Basic Recruit Training Programs.

Other agencies could incur increased costs if the academies that provide their training choose not to include the dart-firing stun gun training within the current curriculum but choose to add the additional 4 hours to existing requirements. While this has the potential to produce a significant impact, FDLE staff believe that most agencies that allow officers to use stun guns already provide training.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not specify whether the 4 hours of training would be included in the current hourly training requirements for LEOs (672), COs (532), and CPOs (424) or whether the 4 hours would be in addition to those training requirements.

The bill provides that COs and CPOs must undergo a minimum of 4-hours training in the use of dart-firing stun guns as part of their respective Basic Recruit Training Programs. The Department of Corrections reports that they do not use "dart-firing stun guns" and have no plans to use such devices in the future.[13] The Florida Highway Patrol and the Department of Transportation (Motor Carrier Compliance) have also reported that their agencies do not use dart-firing stun guns.

The bill provides that an LEO, CO, or CPO's decision to use a dart-firing stun gun must involve an arrest or custodial situation where the person subject to the arrest or custody escalates resistance to the officer from "passive physical resistance" to "active physical resistance." The above-quoted terms are not defined in the bill or otherwise in statute.

As noted above, there are many different types of stun guns (touch guns, some that fire probes, etc...), and different types (guns that deliver the shock through a stream of water or via laser) are being

[12] Rule 11B-35.002, F.A.C.

[13] The Department reports that although they currently use hand-held electronic immobilization devices (EIDs), such devices are not considered "dart-firing" and would not fall under the purview of the bill.

developed. This bill specifically addresses the use of "dart-firing stun guns," thus excluding from its provisions any other type of stun gun that an LEO, CO, or CPO may carry.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 11, 2006, the Criminal Justice Committee adopted a strike-all amendment and reported the bill favorably with Committee Substitute. The strike-all amendment addressed some of the issues raised in the original bill analysis. Specifically, the amendment:

- Defined the term "dart-firing stun gun" and conformed other current statutory provisions to that definition.
- Broadened the required officer training of the potential effects of dart-firing stun guns so that it is not limited to people who are under the influence of drug or alcohol.
- Eliminates the annual training requirement for officers who are not authorized by their agency to use dart-firing stun guns.

CHAMBER ACTION

The Criminal Justice Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to dart-firing stun guns; amending s. 790.001, F.S.; defining "dart-firing stun gun" for the purposes of ch. 790, F.S.; deleting the definition of "remote stun gun"; amending ss. 790.01 and 790.053, F.S., relating to the carrying of concealed weapons and the open carrying of weapons, to conform; authorizing the carrying of a dart-firing stun gun, both openly and in a concealed manner, for purposes of lawful self-defense; amending s. 790.054, F.S.; prohibiting the use of a dart-firing stun gun against a law enforcement officer who is on duty; providing a penalty; creating s. 943.1717, F.S.; providing circumstances during which law enforcement, correctional, and correctional probation officers may use a dart-firing stun gun; requiring the Criminal Justice Standards and Training Commission to establish standards for instruction in the use of dart-firing stun guns; requiring that a minimum number of hours in such training be included in the basic skills course required for certification;

requiring annual training for certain officers; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (15) of section 790.001, Florida Statutes, is amended to read:

790.001 Definitions.--As used in this chapter, except where the context otherwise requires:

(15) "Dart-firing ~~Remote~~ stun gun" means any ~~nonlethal~~ device having one or more ~~with a~~ tethered darts that are capable of delivering an electrical current ~~range not to exceed 16 feet and which shall utilize an identification and tracking system which, upon use, disperses coded material traceable to the purchaser through records kept by the manufacturer on all remote stun guns and all individual cartridges sold which information shall be made available to any law enforcement agency upon request~~.

Section 2. Subsections (4) and (5) of section 790.01, Florida Statutes, are amended to read:

790.01 Carrying concealed weapons.--

(4) It is not a violation of this section for a person to carry for purposes of lawful self-defense, in a concealed manner:

(a) A self-defense chemical spray.

(b) A nonlethal stun gun or dart-firing ~~remote~~ stun gun or other nonlethal electric weapon or device that ~~which does not~~

~~fire a dart or projectile and~~ is designed solely for defensive purposes.

(5) This section does not preclude any prosecution for the use of an electric weapon or device, a dart-firing ~~or remote~~ stun gun, or a self-defense chemical spray during the commission of any criminal offense under s. 790.07, s. 790.10, s. 790.23, or s. 790.235, or for any other criminal offense.

Section 3. Section 790.053, Florida Statutes, is amended to read:

790.053 Open carrying of weapons.--

(1) Except as otherwise provided by law and in subsection (2), it is unlawful for any person to openly carry on or about his or her person any firearm or electric weapon or device.

(2) A person may openly carry, for purposes of lawful self-defense:

(a) A self-defense chemical spray.

(b) A nonlethal stun gun or dart-firing ~~remote~~ stun gun or other nonlethal electric weapon or device that ~~which does not fire a dart or projectile and~~ is designed solely for defensive purposes.

(3) Any person violating this section commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 4. Section 790.054, Florida Statutes, is amended to read:

790.054 Prohibited use of self-defense weapon or device against law enforcement officer; penalties.--A person who knowingly and willfully uses a self-defense chemical spray, ~~or~~ a

nonlethal stun gun or other nonlethal electric weapon or device, or a dart-firing ~~remote~~ stun gun against a law enforcement officer engaged in the performance of his or her duties commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 5. Section 943.1717, Florida Statutes, is created to read:

943.1717 Use of dart-firing stun guns.--

(1) A decision by a law enforcement officer, correctional officer, or correctional probation officer to use a dart-firing stun gun must involve an arrest or a custodial situation during which the person who is the subject of the arrest or custody escalates resistance to the officer from passive physical resistance to active physical resistance and the person:

(a) Has the apparent ability to physically threaten the officer or others; or

(b) Is preparing or attempting to flee or escape.

(2) The Criminal Justice Standards and Training Commission shall establish standards for instructing law enforcement, correctional, and correctional probation officers in the use of dart-firing stun guns. The instructional standards must include the effect that a dart-firing stun gun may have on a person.

(3) Each basic skills course required for certification as a law enforcement, correctional, or correctional probation officer must include instruction on the use of dart-firing stun guns. The portion of the basic skills course on the use of stun guns must be a minimum of 4 hours' duration.

(4) After completing the basic skills course, each law enforcement, correctional, and correctional probation officer who is authorized by his or her agency to use a dart-firing stun gun must complete an annual training course on the use of dart-firing stun guns. The annual training course on the use of dart-firing stun guns must be a minimum of 1 hour's duration.

Section 6. This act shall take effect upon becoming a law.